IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 9TH MARCH 2007 / 18TH PHALGUNA 1928

WP(C).No. 14795 of 2005(J)

PETITIONER:

CLR WORKERS' UNION (INTUC),
CHITTUR-TATTAMANGALAM UNIT, PALAKKAD DISTRICT,
REPRESENTED BY ITS SECRETARY,
ARUMUGHAM, AGED 43 YEARS, S/O.APPASWAMY.

ADDL. 2. ARUMUGHAN, S/O.APPASWAMY, SWAMI VILAS ROAD, THATHAMANGALAM PO., PALAKKAD.

" 3. SAHADEVAN, S/O.ARUMUGHAN, MOOTHACHETTIKULAMB, THATHAMANGALAM PO., PALAKKAD.

" 4. VASU, S/O.CHATHU, POONGODU (H), THATHAMANGALAM, PALAKKAD

" 5. VELAYUDHAN, ANDI, CHENTHAMARA NAGAR, THATHAMANGALAM, PALAKKAD

" 6. AROGYASWAMI, S/O.CHAMIKANNE, CHINGATTU KOLAMBU, CHENTHAMARA NAGAR, THATHAMANGALAM, PALAKKAD.

7. RADHAKRISHNAN, S/O.RAMACHANDRAN, VADAKKETHARA,CHITTUR, PALAKKAD.

" 8. NARAYANAN R., S/O.APPUKUTTY, DO. DO.

" 9. NARAYANAN A.,S/O.APPUKUTTY, VADAKKANTHARA, CHITTUR, PALAKKAD.

" 10. ARAVINDAKSHAN, S/O.PAZHANIMALA, VADAKKETHARA, CHITTUR, PALAKKAD.

ADDL. 11. SUNDARAN, S/O.ARUMUGHAN, KAVILKALAM,
THATHAMANGALAM, PALAKKAD DIST.

" 12. BABU, S/O.KUNJURAMAN, OLAKKAN VEEDU,
NEDUKKALAM, CHITTUR COLLEGE PO.,
PALAKKAD.

ADDL. PETITIONERS 2 TO 12 ARE IMPLEADED VIDE ORDER DATED 28.11.2006 IN I.A.11396/06.

BY ADV. SRI.RENJITH THAMPAN

RESPONDENTS:
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1. CHITTUR-TATTAMANGALAM MUNICIPALITY
REPRESENTED BY ITS SECRETARY,
MUNICIPAL OFFICE, CHITTUR.

2. STATE OF KERALA, REPRESENTED BY
SECRETARY, DEPARTMENT OF LOCAL ADMINISTRATION,
SECRETARIAT, THIRUVANANTHAPURAM.

ADDL. 3. THE KERALA PUBLIC SERVICE COMMISSION REP.
BY ITS SECRETARY, THIRUVANANTHAPURAM.

(ADDL.R3 IMPLEADED AS PER ORDER DT.9.3.2007 IN I.A.NO.14353/06)

R1 BY ADV. SRI.A.SREERAMAKRISHNAN
SRI.G.HARIHARAN
R2 BY GOVT.PLEADER SRI.K.J.MOHAMMED ANSAR.
ADDL.R3 BY ADV. SRI.P.C.SASIDHARAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

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W.P.(C) No.14795 OF 2005

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DATED THIS THE 9TH MARCH, 2007

J U D G M E N T

The petitioner is an association of CLR workers working in the 1st respondent-Chittur-Thathamangalam Municipality. The petitioner submits that in all Municipalities in Kerala, large number of contingent workers are engaged on CLR basis under daily wages. Since they were engaged regularly without break for long number of years, Government on 9.8.2001 issued G.O.No.21273/83/97 directing that all workers who were working as contingent workers in the Municipalities on daily wages upto 31.12.1991 should be absorbed as permanent workers. Subsequently the Government clarified the position holding that all contingent workers employed on daily wage basis in municipalities upto 31.12.2000 will be entitled for regularisation under the respective municipalities and Ext.P1 is copy of the Government letter dated 25.8.2001 issued in this regard. The petitioner submits that in the 1st respondent-Municipality there are 11 contingent workers who were working on daily wage basis for more than 11 years and these workers became eligible for regularisation as per Ext.P1. Exts.P2 and P2(a) produced are copies of the muster roll maintained

by the Municipality for January and February, 2000 of the contingent employees on daily wages. The petitioner-Association has been consistently representing to the Municipality for regularisation of these workers and Ext.P3 dated 23.6.2004 is copy of one such representation. The 11 workers named in Exts.P2 and P2(a) being the only persons working as contingent workers on daily wage basis are entitled for regularisation, as has been done in the case of similar workers in other municipalities. Ext.P4 is copy of the proceedings of the Kunnamkulam Municipality dated 30.9.2004 and Ext.P5 is copy of the proceedings of the Thrissur Corporation dated 27.3.2004. Complaining that instead of regularising these workers, there is now an attempt on the part of the Municipality to disengage them, this Writ Petition has been filed on various grounds seeking the following reliefs:

i) issue a writ of mandamus directing the 1st respondent to regularise the service of the 11 contingent workers mentioned in Exts.P2 and P3, in view of Ext.P1 order;

ii) direct the 1st respondent to consider and pass orders on Ext.P3 within such time as may be fixed by this Court.

2. The Secretary of the Municipality has filed a counter affidavit contending that the Writ Petition is not maintainable and denying all

the claims and contentions of the petitioner-association. It is stated therein that the 11 employees mentioned in Ext.P3 are given work on daily wage basis as and when necessity arises and not regularly. As the Municipality is in financial difficulties, it is not possible to employ workers on any other mode except on payment of daily wages and the Municipality is thus carrying on sanitation work in this manner. Exts.P2 and P2(a) will only show that the 11 workers were working on daily wage basis in January and February, 2000; but those documents will not support the claim that they have been working continuously as contingent workers upto 31.12.2000 It is pointed out in the counter affidavit that the 11 workers are not engaged for doing work on daily wages on the advice of the Employment Exchange but were engaged by the Municipality directly as and when exigencies arise. The counter affidavit reiterates that on account of financial difficulties, the Municipality is not in a position to engage contingent employees as permanent employees. Issuing directions sought for by the petitioner will put the Municipality to considerable hardship. The Kunnamkulam Municipality and Thrissur Corporation might have engaged contingent workers as permanent workers due to sound financial position of those municipalities. The 1st respondent does not have the capacity to

engage the 11 workers as permanent workers.

3. An additional counter affidavit also was filed by the 1st respondent after they produced the list of CLR workers maintained by the Municipality pursuant to an order passed by this Court on 6.7.2005. Going by this seniority list, there are 11 CLR workers, viz., A.Arumughan, R.Radhakrishnan, R.Narayanan, P.Aravindakshan, K.Babu, A.Naryanan, Sahadevan, Vasu, Arogyaswamy, Sundaran and Velayudhan. This list shows that the first five persons have been working since February, 1999; the 6th person, since January, 2000; 7th person since September, 2000 and the other four persons since August, 2000. The additional counter affidavit contends that for doing sanitation work in the municipality there were previously 62 permanent employees. Consequent on retirement, presently there are 11 permanent employees and there was shortage of workers who attend to sanitation works. This was why some of the members of the petitioner-association were engaged to attend the sanitation work on daily wages. Presently there are 17 persons including these 11 persons who are engaged to work on daily wages as and when work is to be done. During the years 2000-01, 2001-02 and 2002-03, under the Peoples Planning Scheme, kudumbasree workers are engaged for

doing work and their remuneration is being paid on the basis of day-to-day work. On that basis, it is contended that workers including the 11 workers are not appointed under CLR basis. The additional counter affidavit also reiterates the contention that the Municipality continues to be in acute financial difficulties, the only income of the Municipality being tax and licence fee collection. It was in view of these facts that the Government has sanctioned Clean Kerala Mission Scheme and IDSMT to the Municipality and the Municipality has prepared the project as per the above scheme and it is approved and sanctioned by the Government. If the above project is implemented, the financial commitments of the Municipality which is in considerable difficulties will be much less than appointing permanent workers as sought for by the petitioner-association.

4. The petitioner filed I.A.No.1017 of 2006 seeking issuance of a direction to the Municipality to absorb the seniormost CLR workers mentioned in Ext.P2 to regular service on the basis of Ext.P1. It is stated in the affidavit in support of that application that presently only 17 workers are working as CLR workers in Chittur Municipality as against 52 vacancies. These 17 workers include the names of the persons mentioned in Ext.P2 list and the names of the persons shown

in the seniority list prepared by the Municipality as directed by this Court.

5. The 1st respondent has filed a counter affidavit to the above I.A. also. The contention raised in the counter affidavit is that the 17 workers who are doing sanitation works in the Municipality are not CLR workers nor are they doing work continuously in the Municipality for more than 10 years. It is pointed out that evidence has not been produced by the petitioner to show that these 17 workers have been working continuously upto 31.12.2000. Ext.R1(a) which is described as a list prepared from the Attendance Register maintained by the Municipality is produced.

6. To the counter affidavit submitted by the Municipality, the petitioner has filed a reply affidavit. It is submitted therein that the persons mentioned in the seniority list submitted by the Municipality are working as CLR workers for the past more than 6 years continuously. The first five persons were originally engaged on regular basis but after three months their services were terminated and from 1999 onwards they were continuously working as CLR workers. Those persons whose names are shown in the seniority list are the same persons mentioned in Exts.P2 and P3 and they have been working as

CLR workers in the Municipality for sanitation duty from 1989-90 onwards. From February, 1999 till the date of filing of the reply affidavit, all the workers mentioned in the seniority list filed by the Municipality are working continuously in the Sanitation Department of the Municipality without break. At the time of their initial engagement, they used to be paid daily wages at the rate of Rs.18/-. Presently, the daily wages paid to them is Rs.110/-. These CLR workers are not being paid any other benefits and much less service benefits like leave without pay, increment, Dearness Allowance etc. The Municipality is exploiting the CLR workers by continuing them as such and not absorbing them to regular service even though other Municipalities have absorbed similar CLR workers to regular service. The work which is being discharged by the CLR workers in the 1st respondent-Municipality is the same as the work discharged by regular hands in other municipalities. As against the sanctioned posts of 52 in the Sanitation Department, there are only 10 workers; but the entire work is done by them and the 11 CLR workers mentioned in the seniority list. The action of the Municipality in not regularising eligible persons in accordance with Ext.P1 is illegal, unfair and arbitrary. If all the records of the Municipality are called for, it will be seen that

persons mentioned in Exts.P2 and P3 have been working much prior to February, 1999. As regards the contention raised with reference to Kudumbasree workers, it is stated that one male and three females were appointed in the Kudumbasree Project, but their services were terminated in March, 2003 and these persons are also now engaged on daily wages.

7. The petitioner has filed I.A.10079 of 2006 seeking a direction to the Municipality to pay wages to the CLR workers alleging that now the Municipality has stopped paying wages to them.

8. After hearing the counsel for some time, it was noticed that the Municipality has a contention that the signatory to the Writ Petition is not entitled to espouse the cause of all the 11 CLR workers mentioned in Ext.P2. To meet that contention, I.A.No.11396 of 2006 was filed seeking impleadment of all the 11 persons whose names are given in the seniority list prepared by the Municipality. The said I.A. was allowed as per order dated 28.11.2006.

9. I have heard the submissions of Sri.Ranjith Thampan, learned counsel for the petitioners and also those of Sri.A.Sreeramakrishnan, counsel for the Municipality.

10. Counsel for the Municipality in the meanwhile filed

I.A.No.11740 of 2006 seeking reception of a Government Order (G.O.(P)No.39/02/P & ARD dated 26.8.2002, marked as Annexure-R1, which is to the effect that service of provisional employees continuing in service as per Circular No.9516/Adv/CI/92/P & ARD dated 9.3.2005 and Government letter No. No.9516/Adv/CI/92/P & ARD dated 17.3.1998 will not be regularised. When Annexure-R1 was brought to my notice, I directed the Government Pleader to get clarification from the Government as to whether Ext.P1 relied on by the petitioners will be affected by Annexure-R1 relied on by the Municipality. Even as the Government's views were expected to be reported, the Municipality filed I.A.No.14353 of 2006 seeking impleadment of the Public Service Commission as an additional respondent. The P.S.C. was sought to be impleaded on the basis of Section 3 of the Kerala Public Service Commission (Additional Functions as respects the Services Under Local Authorities) Act, 1973 which provides that the P.S.C. is to be consulted on all matters relating to methods of recruitment to services and posts under local authorities. Even though I did not allow the said I.A., notice on the application was ordered to be given to Mr.P.C.Sasidharan, Standing Counsel for the P.S.C. and I have heard him also.

11. Mr.K.J.Mohammed Ansar, Government Pleader placed before me copy of the message received from the Government regarding the implications of Annexure-R1 on Ext.P1 letter. Going by this letter, the subject-matter of Annexure-R1 and Ext.P1 are different. Later, a detailed statement has been filed on behalf of the 2nd respondent-Government. Through the statement also it is clarified that appointment of contingent workers in local bodies are being made as per the guidelines issued in G.O.(MS)No.14/82/LBR dated 22.4.1982 and in Circular No.2591/M1.A4/82/LA & SWD dated 27.1.1982 and that those appointments are not through the Kerala Public Service Commission. It has been very clearly stated that Ext.P1 clarification letter will not become valueless by the issuance of Annexure-R1 and that the issues covered by Annexure-R1 and Ext.P1 are different. Mr.Ranjith Thampan, counsel for the petitioner and Mr.A.Sreeramakrishnan, counsel for the Municipality would address me in considerable detail on the basis of the pleadings raised by their parties and the various documents placed on record by them. My attention was drawn by Mr.Sreeramakrishnan to the judgment of the Supreme Court in **Secretary, State of Karnataka v. Uma Devi** [(2006) 4 SCC 1 = AIR 2006 SC 1806) while Mr.Ranjith Thampan,

counsel for the petitioner drew my attention to the judgment of this Court **Manoj K.R. v. Kerala State Beverages Corporation** (ILR 2006 (4) Kerala 285). Mr.P.C.Sasidharan while submitting that the P.S.C. may not have any role to play in the matter of appointment of contingent workers in municipalities, would support Mr.Sreeramakrishnan's submissions on the basis of the judgment of the Supreme Court in **National Fertilizers Ltd. v. Somvir Singh** [(2006) 5 SCC 493] and argue that merely because of long continuance of service, an employee who has not been recruited to public service regularly is not entitled for regularisation.

12. Having considered the rival submissions made before me in the light of the pleadings of the parties, the various documents available on record and the ratio which emerges from the various judicial precedents cited at the Bar, I am of the view that additional petitioners 2 to 12 are entitled for relief. Ext.P1 letter has been issued by the Government in clarification of G.O.(MS)No.91/01 of the Local Self Government Department issued on 29.3.2001 and earlier Government Orders which governed the appointment of contingent workers in local bodies. The clarification is clearly to the effect that contingent workers in the service of local bodies who were in service

up to 31.12.2000 on daily wages are entitled for regularisation. Even though a scanning of the counter affidavits filed by the Municipality at different stages of the case will show that the Municipality is trying to contend that additional petitioners were not in service on the crucial date mentioned in Ext.P1, I am of the view that it is too late for the Municipality to raise such a contention since in the seniority list which was prepared by the Municipality pursuant to the order of this Court dated 6.7.2005, it is clearly shown that the additional petitioners 2 to 12 have been working as CLR workers in the Municipality at least since 20th September, 2000. It is clear from the additional counter affidavit submitted by the Municipality that previously there were 62 permanent employees for the Municipality for doing sanitation works and that presently the strength of permanent employees for doing sanitation work has become reduced to 11 due to retirement of permanent employees and that it is to cope up for the shortage of workers to attend to sanitation work that the Municipality is engaging CLR workers. It is stated in the very same additional counter affidavit that including the 11 petitioners altogether 17 persons are engaged to work on daily wage basis "as an when work is to be done". It is also stated that Kudumbasree workers are also engaged on daily wages for doing

the work. I do not think that the Municipality will be justified in contending that the services of the petitioners are not necessary in the Municipality. Attending to sanitation work within the area of the Municipality will be absolutely necessary since the same falls within the realm of the essential functions of the local authority. A Municipality which had a sanctioned strength of 62 permanent employees to attend to sanitation work is presently having only 11 permanent employees and it is transparently clear that the Municipality is engaging CLR workers daily to attend to sanitation work. Even though the counter affidavits successively filed try to project the financial constraints of the Municipality, significantly the Municipality has not produced any material to support the case that the Municipality is in so dire financial straits. It is clear that the services of the 11 petitioners are being utilised every day and that the diffidence of the Municipality to recruit them into regular service is only because of the realisation that upon regularization they will have to be paid increments and allowances admissible to regular employees and not just daily wages which are being presently paid to them. I am of the view that a municipality which is presently having only 11 regular hands as against a sanctioned strength of 62 in the Sanitation Department is not justified

in not relying on Ext.P1 and the Government Orders mentioned therein which are bound to be followed by the Municipality. If the Government Orders referred to in Ext.P1 and Ext.P1 itself are binding on other Municipalities in the State such as Kunnamkulam Municipality and Thrissur Corporation, the same is binding on the 1st respondent-Municipality also. The Municipality cannot under the excuse of financial constraints ignore the Government Orders and refuse regularization to the additional petitioners who are eligible for regularization as per Ext.P1. The defence taken by the Municipality on the basis of Annexure R1 cannot succeed since it has been clarified by the Government that Annexure R1 and Ext.P1 operate in different fields and that Ext.P1 continues to operate in so far as the CLR workers serving Municipalities on daily wages are concerned.

12. The result is that the petitioners will get relief. There will be a direction to the 1st respondent-Municipality to issue proceedings in terms of Ext.P4 issued by the Kunnamkulam Municipality and Ext.P5 issued by the Thrissur Corporation regularising additional petitioners 2 to 12. Proceedings as directed above shall be issued within two months of receiving copy of this judgment. Till then the seniority list of CLR workers submitted by the Municipality before this Court will

continue to operate and service of other workers on daily wages will be solicited by the Municipality only if the workers mentioned in the said list are not available.

The Writ Petition is allowed as above. No costs.

(PIUS C. KURIAKOSE, JUDGE)

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